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June 16, 1987

The Honorable I. Sylvan Brown
Maricopa County Superior Court Judge
Superior Court of Arizona
201 West Jefferson
Phoenix, Arizona 85003

Re: I87-085 (R86-160)

Dear Judge Brown:

You have asked for our opinion on what to do with monies received by a trustee from the sale of lots in unincorporated townsites, pursuant to A.R.S. § 9-1133, when the conditions for disposition of the monies set forth in the statute cannot be complied with at this time.

Under A.R.S. § 9-1101, the governing body of an incorporated city or town or a superior court judge in the county in which an unincorporated town is located may enter land as a townsite at a federal land office. These persons then become trustees responsible for the sale of lots to claimants. A.R.S. §§ 9-1104 to -1118.

A.R.S. §§ 9-1131 to -1133 deal specifically with the sale of unclaimed lots within townsites acquired before February 14, 1912, the date Arizona became a state. A.R.S. § 9-1131 allows the trustee to conduct a public auction of unclaimed lots within the townsite. A.R.S. § 9-1132 allows the direct sale of lands to persons who have had actual or constructive possession and who have paid taxes on the property.

A.R.S. § 9-1133 directs the trustee's disposition of the proceeds from the sales outlined in A.R.S. §§ 9-1131 and 9-1132. The statute states:

The proceeds of sales made as provided in this article shall be applied first to the payment

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of costs and expenses of sale. Any surplus shall be paid to the governing body of the city or town, if incorporated, to be placed in the general fund, or, if unincorporated, for making such public improvements as may be directed by a meeting of the citizens of the town to be held after thirty days notice by the trustee.

Before discussing the statute, a review of the situation that resulted in this dilemma is pertinent.^{1/} In 1882, a Maricopa County judge acquired title to a 160 acre parcel named the Vulture City townsite, as trustee under the federal public lands act of March 2, 1867. 14 Stat. 541. None of the parcels of the townsite were conveyed by that particular judge, or any of his successors, for eighty years.

In 1962, an individual petitioned Maricopa County Superior Court, seeking to buy approximately thirty acres of the property. After following the procedures outlined in A.R.S. § 9-1131, the judge sold the property to the petitioner and ordered the \$1,350 in sale proceeds deposited with the Maricopa County Superior Court Clerk until further notice. The judge apparently made no further order regarding the money.

A second petition was filed with the court in 1986 to sell the remaining townsite property. During compliance with A.R.S. § 9-1131, the owner of a patented mining claim, included in the townsite, secured preferential rights to those twenty acres and bought them under A.R.S. § 9-1132. The remaining townsite property was sold to the petitioner. The judge, in his capacity as trustee, has ordered the deposit of the \$16,400 from that sale with the superior court clerk until further notice and has requested this opinion.

A.R.S. § 9-1132 provides only two ways to dispose of money from the sale of unclaimed lots: (1) deposit into the general fund of an incorporated municipality created pursuant to

^{1/}This history is culled from the superior court files of the two land sales conducted under A.R.S. § 9-1131.

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A.R.S. §§ 9-1101 to -1118 or (2) use for public improvements chosen by the citizens of the unincorporated town created by this statute.

The legislature did not enact alternate procedures in case a town had not developed on patented townsites at the time lots were sold. State lawmakers clearly intended the proceeds from the sale of lots to benefit the town's citizens. A.R.S. § 9-1105 provides the same procedure as A.R.S. § 9-1133 for disposing of money from the sale of unclaimed lots within townsites acquired after statehood. Nevertheless, there is no governing body for the town of Vulture City.

Presumably the trustee has concluded that there are not and never will be any citizens of the unincorporated town of Vulture City who can assert a claim to the proceeds of sale to pay for public improvements, since the entire townsite has been sold. Furthermore, a review of the superior court file discloses that the most recent land claimants have not asserted in their pleadings any right to control the disposition of the proceeds from the sale.

In light of the absence of any qualifying citizens who may deliberate upon the disposition of the funds, the trustee should consider the applicability of A.R.S. §§ 44-301 to -340, the Uniform Unclaimed Property Act.^{2/} Pursuant to this act

^{2/}See, A.R.S. §§ 44-301(9), (11), 44-302(B), 44-303, 44-313. The facts of this matter may require the court to construe liberally the Uniform Unclaimed Property Act to achieve a tenable legal solution. Such an application of the statute could be premised on the following rationale. The statute applies to money that is unclaimed by the owner for more than seven years. The statute at A.R.S. § 44-301(11) defines "owner" broadly to include "a beneficiary in the case of a trust" or "a person having a legal or equitable interest in property subject to this chapter" A.R.S. § 9-1133 designates the "citizens of the town" as the statutory beneficiaries of the funds held in trust by the superior court. Therefore, funds which remain unclaimed for seven years should be presumed abandoned regardless of the "owner's" failure to demand payment. A.R.S. § 44-302.

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the trustee should report, after the passage of seven years, to the Arizona Department of Revenue the failure of any qualifying citizens to claim the proceeds of sale. A.R.S. § 44-317. If no qualified citizens approach the trustee seeking disbursement of the funds for public improvements during the next seven years, then the funds should be transferred to the state. Upon payment of the proceeds to the Department of Revenue, the state assumes responsibility for the disposition of the funds. A.R.S. §§ 44-320, 44-323.

Sincerely

A handwritten signature in cursive script, appearing to read "Bob Corbin".

BOB CORBIN
Attorney General

BC:MNH:vp